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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,118	09/21/2001	Steven R. Pearson	BEA920010027US1	5751
30011	7590	01/18/2005	EXAMINER	
LIEBERMAN & BRANDSDORFER, LLC 12221 MCDONALD CHAPEL DRIVE GAITHERSBURG, MD 20878			FILIPCZYK, MARCIN R	
			ART UNIT	PAPER NUMBER
			2161	//

DATE MAILED: 01/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/960,118

**Applicant(s)**

PEARSON, STEVEN R.

**Examiner**

Marc R Filipczyk

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

This action is responsive to Applicant's response filed on September 2, 2004 in which claims 1-14 are pending. The change of address of 9/2/04 has been noted.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth whether the invention is within the technological arts.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a method claim to pass muster, the recited method must somehow apply, involve, use, or advance the technological arts.

In the present case, independent claim 1 only recites an abstract idea. The recited steps of merely identifying and retaining a data item as a duplicate do not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by

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use of a pencil and paper. These steps only constitute an idea of identifying a duplicate data item.

Since the claimed invention, as a whole, is not within the technological arts as explained above, claim 1 and claims 2-5 which depend from claim 1, are deemed to be directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 6 and 9, the amended feature of “alternating between said input streams containing said duplicate data item” is indefinite. It is not clear what alternating between input streams achieves and it is not clear how it limits the claim. Further, regarding claim 6, “manager” is indefinite. It is not clear what the manager’s function is and where it is supported in the specification.

Claims 2-5, 7, 8 and 10-14 depend from claims 1, 6 and 9 respectfully, thus they are rejected on the same merit.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Or,

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 5, 6, 9 and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicant's Admitted Prior Art (AAPA).**

Regarding claims 1, 5, 6, 9 and 13, AAPA discloses a method for organizing data items from two or more input streams comprising the steps of: (p.1, par. 5, lines 2 and 3)

Identifying a data item being processed from one of the input streams as being a duplicate of a previously processed data item; (p.1, par. 6, line 6)

Retaining an indication that the data item being processed is a duplicate data item; (p.1, par. 6, lines 6 and 7; *-1,0,1 where 0 is equal or a duplicate*) and

Alternating between said input streams containing said duplicate data item (p.1 par 6, lines 3-6 and par 7, line 2; *merging*).

(Note: for equal or duplicate key values after the key comparison the swap can be omitted)

**Claims 1, 6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith (U.S. Patent No. 5,832,068).**

Regarding claims 1, 6 and 9, Smith discloses a method for organizing data items from two or more input streams comprising the steps of: (fig. 1, items 10 and 12 col. 1, lines 19-24)

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Identifying a data item being processed from one of the input streams as being a duplicate of a previously processed data item; (fig. 3, items 106 and 108)

Retaining an indication that the data item being processed is a duplicate data item; (fig. 3, item 114) and

Alternating between said input streams containing said duplicate data item (fig. 2, items 24, 26, 32 and 34, col. 7, lines 4-7).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2-4, 7, 8, 10-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent No. 5,832,068) in view of AAPA.**

Regarding claims 2-4, 7, 8, 10-12 and 14, Smith and AAPA disclose all of the claimed subject matter as discussed above including an indication that data item is a duplicate (fig. 1, item 1 and fig. 2, items 24, 26, 32 and 34, Smith) but do not expressly teach that the indication of the data item is an integer corresponding to “empty”, “duplicate”, “merging” or “done” having associated values for every indication. However, AAPA teaches an ordered merging replacement selection wherein each node of a tree stores information about a “loser” of a prior sort key comparison among its children. Hence, it would have been obvious to a person of

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ordinary skill in the art having Smith's indicator along with AAPA at the time the invention was made to modify Smith's indicator in view of AAPA so that the unique integer values would indicate a specific task (e.g. value two for merging) because Smith's data record exclusion indicator includes a generated unique data record identifier (col. 3, lines 27-29, Smith) and AAPA teaches the steps of the ordered merging by replacement, thus the modification would be simple having both arts at hand. One would have been motivated to combine Smith and AAPA because both use special instructions for duplicate data processing in order to process data faster and more efficiently.

### ***Response to Arguments***

Applicant's arguments filed September 2, 2004 have been fully considered but they are not persuasive. The arguments and responses are listed below.

On page 9 of the 9/2/04 response, argument of record is that, "AAPA does not show alternating between input streams with duplicate key values, as claimed by Applicant in amended claim 1".

Examiner disagrees. The amended claim feature of "alternating between said input streams containing said duplicate data item" renders the claim indefinite as explained above. Further, AAPA teaches alternating (reading data from both input streams) when merging duplicate data (page, 1, par. 7, AAPA). Last, Examiner notes that to identify, manage or process duplicate data alternating between at least two input streams is required.

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On page 10 of the 9/2/04 response, Applicant argues that, “Smith does not provide support for alternating between input streams in response to a duplicate data item, rather Smith merely substitutes the new data item for the old data item”.

Examiner disagrees. The amended claim feature of “alternating between said input streams containing said duplicate data item” renders the claim indefinite as explained above. Further, Smith clearly discloses alternating between input streams in response to a duplicate data item by using a record handler (fig. 2, item 32) to manage all the records.

On page 11 of the 9/2/04 response, Applicant argues that, “Smith fails to show each and every element as presented in Applicant’s claimed invention”.

Examiner disagrees. Instead of arguing all of the claimed elements, Applicant only argues the lack of support for alternating between input streams in response to a duplicate data item in the prior art as amended. This argument is addressed above and no other issues have been raised.

Applicant is reminded that although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### ***Conclusion***

To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).



**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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MF

January 11, 2005



**SAFET METJAHIC  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100**